U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14515160

Date: JUL. 21, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a senior electrical engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that the proposed endeavor was of substantial merit or national importance, that the Petitioner is well positioned to advance the proposed endeavor, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director erred in denying the petition.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

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[1] In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998).

[2] See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The record indicates that the Petitioner qualifies as a member of the professions holding an advanced degree.[4] The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in Dhanasar.

From the record, we understand that the Petitioner currently works as a senior electrical engineer in the research and development department of a [redacted] device company. In her position, she conducts scientific research in the areas of [redacted] and analog integrated circuit design. Among her accomplishments, she designed [redacted] to be used in [redacted] devices as well as contributed to the invention of [redacted] based smart systems for use in [redacted] accessories.

The Petitioner's proposed endeavor is to contribute to the advancement of practical applications of [redacted] technology for the [redacted] device industry. The Petitioner asserted that the endeavor has substantial merit due to the potential broader applications of the research. However, the Director concluded that the Petitioner submitted insufficient evidence to establish that the proposed endeavor has substantial merit and national importance. On appeal, the Petitioner submits various articles concerning the potential applications of her research. The potential applications cut across multiple industries and include increased security and enhanced communication potential, which suggests that research in these areas would, in fact, have substantial merit. Therefore, we withdraw the Director's finding concerning substantial merit. Notwithstanding this determination, we agree with the Director that the Petitioner has not persuasively established the national importance of the proposed endeavor.

The Director issued a request for evidence (RFE), alerting the Petitioner to various evidentiary deficiencies and included a specific instruction to submit a detailed description of the proposed endeavor along with an explanation as to why it is of national importance. In her RFE response, the Petitioner clarified that her proposed endeavor involves continuing to research, design, and develop [redacted] enabled systems on behalf of the [redacted] device company where she works. The

[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] The Beneficiary earned a master's degree in electrical engineering from a U.S. university in 2015.

CEO of the company stated that he plans to use the Petitioner's expertise "in [redacted] wireless communication, electrical hardware designs [] for identification, wireless communication, authentication, secure power access, one-time disposable use of [redacted] accessories and [redacted] risk management[,]" and in other ongoing and future projects involving [redacted] systems.

The Petitioner emphasized that her research advances [redacted] wireless communication, and energy harvesting for [redacted] devices, which has broad applications in the [redacted] field. She stated that her endeavor has substantial merit and national importance because it aims to advance science, as well as benefit the economy and public welfare through the development of advanced [redacted] devices. Specifically, the Petitioner claims that the [redacted] systems she designs will increase revenue in the United States by increasing sales of her employer's [redacted] accessories. Her endeavor will also contribute to the [redacted] because the systems she designs will recognize and reject [redacted] disposable [redacted] accessories. This will have the potential to improve human lives by mitigating the [redacted] that occurs when single-use devices are improperly used more than once, a practice that can lead to [redacted] and a malfunctioning of the [redacted] device.

The record includes letters of support in which the Petitioner's employer, as well as academics and other electronics and electrical engineering practitioners, speak favorably about how the Beneficiary's past research has contributed to the field of [redacted] communications, and energy harvesting.[5] Although the authors of the numerous letters of recommendation discuss the nature of the work the Petitioner has performed in the past, they offer little specific information concerning the Beneficiary's prospective future endeavor.

Many of the letters also contain broad and sweeping claims with little detail or evidence to substantiate them. For instance, [redacted] stated that "[a]ll [the Petitioner's] substantial scientific accomplishment to the area of [redacted] communication and [redacted] engineering is remarkable." [redacted] neither identifies nor demonstrates an awareness of all of the Petitioner's accomplishments in this area and the letter lacks an explanation of why all such accomplishments are remarkable.[6] Unsubstantiated general statements such as this add little evidentiary value to this matter. Another example is [redacted]'s statement that the Petitioner "is amongst the few researchers to investigate and demonstrate implementation of a [redacted] for energy harvesting of [redacted] devices." This claim is not supported by evidence of how many researchers investigate in this field overall or why being amongst a few is important or even relevant.

As with many of the authors, although [redacted] stated that the Petitioner has made significant contributions to the field, she provided little specific detail to corroborate this claim. Although [redacted] stated that he relied upon and cited the Petitioner's research as an important reference, he does not concretely discuss or specifically explain how her work has contributed to the field. Overall, we observe that many authors broadly report the same information about the research topics but offer little information about the specific role the Petitioner had in the research or how the

[5] While we may not discuss every piece of evidence or letter individually, we have carefully reviewed and considered each one.

[6] The Petitioner has four published articles. At the time the petition was initially filed, a 2014 and a 2016 article each had one citation. In addition, the Petitioner stated that she contributed to an invention with a pending patent.

research serves as significant contributions to the field.[7] While research must add information to the pool of knowledge in some way in order to be accepted for publication, this alone is insufficient to substantiate a claim of significant contributions to the field. Simply asserting the claim of contribution to the field does not persuasively establish actual contribution. Similarly, Counsel offers details about the Petitioner's designs but little information about the Petitioner's specific role in the research and development of them. The record contains no evidence that the Petitioner has published any research more recently than 2016, two years prior to the filing of the petition. This suggests that since the Petitioner ended her role as a graduate research assistant and began work with her current employer, she has not published any research findings. This appears important, as it calls into question the Petitioner's claims concerning her endeavor's broader impact and national importance.

In the RFE response, counsel stated that the Petitioner's expertise is an important advancement of science and technology, and that her specialization contributes to the field. Here, counsel confuses the Petitioner's qualifications with her contributions and the impact of her proposed endeavor. Although counsel mentions the Petitioner's expertise, education, and specialization, those qualifications relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under Dhanasar *'s* first prong. Moreover, as already indicated by the Director, the unsupported assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988).

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. In the RFE response and on appeal, the Petitioner emphasizes the broad applications of the research to various industries; however, broad applications alone do not establish that any benefit or positive impact will accrue in such a manner so as to satisfy the national importance element of the first Dhanasar prong. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. Here, the Petitioner relies on the potential broader application as a substitute for impact. The Petitioner has not, for instance, offered sufficient information on the positive economic impact that the [redacted] devices will create, nor has she explained how the positive economic impact of her endeavor will rise to the level of national importance. Presumably, the Petitioner's employer will sell the [redacted] devices containing the Petitioner's technology, which suggests a benefit only to those entities that purchase the devices and the [redacted] with them. If the technology is proprietary, as pending patents would suggest, then the Petitioner has not adequately substantiated how the positive impact would rise to the level of national importance.

The Petitioner does not offer a sufficiently direct connection between her research and the products that might be produced or released to the market. For instance, the Petitioner has not offered a proposed timeline for when her research will be incorporated into products available on the market,

[7] At the time of the RFE response, the Petitioner's 2016 publication had been cited four times. Accordingly, since the initial filing, the Petitioner gained three more citations on one publication.

whether her research is a major or minor feature within the overall product, or how the sale of the products will benefit the nation, as opposed to her employer and its customers. By the Petitioner's logic, any research in her field, which has the potential to be incorporated into consumer products that will eventually benefit the nation at an undefined future time, would qualify under this prong of Dhanasar. We disagree. The Petitioner must establish a more direct connection between the proposed endeavor and the broader implications of it. The Petitioner has offered little indication of how her employer will make the technology widely available to the nation at large, as opposed to only those who purchase the devices. Without more specific evidence, we conclude that the record does not demonstrate any potential economic benefit to the nation.

While the Petitioner provides articles on appeal, some of which discuss the issue of [redacted] pharmaceuticals and [redacted] devices, we have little evidence on what concrete effect, in both economic and [redacted] terms, the Petitioner's research would have on this issue. It cannot be ascertained whether the possible solutions arising from the proposed endeavor would rise to the level of national importance. Although a relevant consideration, it does not follow that simply because the Petitioner works for a [redacted] device company, that contributions made specifically to that employer will generate national level impact. As such, counsel's claims of the ubiquitous national value and commercial benefit have not been persuasively established.

In the totality, the Petitioner has not demonstrated that her specific endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's research does not meet the "national importance" element of the first prong of the Dhanasar framework.[8]

Because the documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated her eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.[9]

III. CONCLUSION

The Petitioner has demonstrated that she qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act. However, as the Petitioner has not met the requisite first prong set forth in the Dhanasar analytical framework, we conclude that the she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. In visa petition proceedings, it is the

[8] Similarly, in Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893.

[9] Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's eligibility under the third prong of Dhanasar. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.